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## THE DORE RECORD

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Filed December 9, 1964.

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION**

**CIVIL ACTION No. 3100, DIVISION.**

**PAULETTE BOUDREAUX RODRIGUE, ET AL.,**

**versus**

**THE AETNA CASUALTY AND SURETY COMPANY  
AND HUMBLE OIL AND REFINING COMPANY.**

**COMPLAINT.**

The complaint of Paulette Boudreaux Rodrigue, widow of Butley J. Rodrigue, individually and as administratrix of the estate of Butley J. Rodrigue, and as tutrix of and administratrix of the estate of her two minor children Angela Rae Rodrigue and Butley J. Rodrigue, Jr., with respect states that:

1.

The complainants are citizens of the State of Louisiana and duly qualified to act in these proceedings; the defendant The Aetna Casualty and Surety Company is domiciled in the State of Connecticut but has its registered agent for service of process for the state of Louisiana in the Parish of East Baton Rouge, Louisiana; defendant Humble Oil and Refining Company is domiciled in the State of Delaware; the mat-

ter in controversy exceeds \$10,000.00 exclusive of interest and costs.

## 2.

The defendant Aetna Casualty and Surety Company is the liability insurer carrying a general and comprehensive policy of liability insurance covering Mayronne Drilling Company and particularly Mayronne Drilling Company's operation which are referred to in this complaint.

## 3.

Complainant, Paulette Boudreaux Rodrigue, was, until the death of Butley J. Rodrigue, married to Butley J. Rodrigue, and of that marriage were born two children, Angela Rae Rodrigue, age one year, and Butley J. Rodrigue, Jr., age three weeks.

## 4.

Butley J. Rodrigue greatly loved and supported his said family and was in turn greatly loved by them.

## 5.

The two said children of complainant and Butley J. Rodrigue would have received guidance, counseling, love, affection and support from their father but for his below described untimely death.



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6.

Complainant, Paulette Boudreaux Rodrigue, would have received the love, affection, support, counseling and guidance of her husband had it not been for his below described untimely death.

7.

Butley J. Rodrigue, at the moment before his death, had been a robust healthy man of the age of twenty-one years and was and had been gainfully employed by Loomis Hydraulic Testing Company, Inc. and looked forward to a long and beneficial period of employment with that company and would have received promotions and increases in his income from that company had it not been for his untimely death.

8.

At the time up until his death, Butley J. Rodrigue was supporting his said family and was at the time of his death, earning with his said employer a steady and good income.

9.

On March 7, 1964, Butley J. Rodrigue, as a part of his duties with his said employer, went aboard that certain drilling rig which rests in navigable waters within the State of Louisiana, at a point north by northwest of Burrwood, Louisiana; the said rig is further described as State Lease 803.

10.

The said drilling rig was owned and operated and maintained by Humble Oil and Refining Company and was also owned, operated and maintained by Mayronne Drilling Company, the insured in the above referred to policy of insurance issued by Aetna Casualty and Surety Company.

11:

On the said date and on the said rig, Butley J. Rodrigue was killed because of the negligence of Humble Oil and Refining Company and Mayronne Drilling Company through their agents and employees.

12.

The above referred to negligence includes the failure to properly maintain and equip the said rig and keep it free of obstacles.

13.

The doctrine of *Res Ipsa Loquitur* is hereby specially pledged.

14.

Butley J. Rodrigue, at the time of his death, was on the said rig as a business visitor and was owed a high degree of care by the said Humble Oil and Refining Company and Mayronne Drilling Company.

15.

Because the said injury occurred on navigable waters, the application of the general maritime rules of

law with respect to maritime wrongs is hereby specially pledged.

## 16

Because of the premises, complainant, Paulette Boudreaux Rodrigue, has been damaged by the loss of love, affection, counsel and guidance and assistance in the up-bringing of their said children in the full and true sum of One Hundred Fifty Thousand and No/100 (\$150,000.00) Dollars, and for the loss of support in the full and true sum of Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars.

## 17.

Angela Rae Rodrigue has been damaged by the loss of love, affection, counselling and guidance because of the premises and this loss is valued at Sixty Thousand and No/100 (\$60,000.00) Dollars; the loss of support which Angela Rae Rodrigue has sustained because of the premises is valued at Thirty-five Thousand and No/100 (\$35,000.00) Dollars.

## 18.

Butley J. Rodrigue, Jr. has been damaged by the loss of love, affection, counselling and guidance because of the premises and this loss is valued at Sixty-two Thousand and No/100 (\$62,000.00) Dollars; the loss of support which Butley J. Rodrigue, Jr. has sustained because of the premises is valued at Thirty-six Thousand No/100 (\$36,000.00) Dollars.

WHEREFORE, complainants pray that defendants be served with a copy of this complaint and cited to answer same, and after due delays and proceedings had there be judgment herein in favor of complainant, Paulette Boudreaux Rodrigue, in the full and true sum of Four Hundred Thousand and No/100 (\$400,000.00) Dollars, and in favor of Paulette Boudreaux Rodrigue as tutrix of Angela Rae Rodrigue in the full and true sum of Ninety-five Thousand and No/100 (\$95,000.00) Dollars, and in favor of Paulette Boudreaux Rodrigue as tutrix of Butley J. Rodrigue, Jr. in the full and true sum of Ninety-eight Thousand and No/100 (\$98,000.00) Dollars, all said judgments being rendered against the defendants, Aetna Casualty and Surety Company and Humble Oil and Refining Company, in solido, with interest as the law provides.

Complainants further pray that this case be tried by jury; and

For all costs in these proceedings; and

For all general and equitable relief.

O'NEAL & WAITZ,  
By: PHILIP E. HENDERSON,  
(Philip E. Henderson),  
Houma, Louisiana,  
Attorney for Complainants.

Filed October 15, 1965.

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION**

**CIVIL ACTION No. 3298, DIVISION.**

**PAULETTE BOUDREAUX RODRIGUE, ET AL.,**

**versus**

**RUBIN W. MAYRONNE, JR., d/b/a MAYRONNE  
DRILLING COMPANY.**

**COMPLAINT.**

The complaint of Paulette Boudreaux Rodrigue, widow of Butley J. Rodrigue, individually and as administratrix of the estate of Butley J. Rodrigue, and as tutrix of and administratrix of the estate of her two minor children, Angela Rae Rodrigue and Butley J. Rodrigue Jr., with respect states that:

**1.**

Jurisdiction in this case is vested in this Court by virtue of 43 USCA Section 1333, which provides for original federal jurisdiction in controversies arising out of and in connection with operations on the artificial islands on the outer Continental Shelf; this suit is a controversy arising out of and in connection with Mayronne Drilling Company's operations on that cer-



tain fixed platform in the outer Continental Shelf which is located in Block 22 of Grand Isle area and designated as Federal Lease No. 031, which operations were conducted for the purposes of exploring for and developing and removing the natural resources of the subsoil and seabed of the outer Continental Shelf.

## 2.

The defendant, Rubin W. Mayronne, Jr. was at all times pertinent to this complaint doing business as the Mayronne Drilling Company (hereinafter Rubin W. Mayronne, Jr., d/b/a Mayronne Drilling Company will be referred to simply as Mayronne).

## 3.

Complainant, Paulette Boudreaux Rodrigue, was, until the death of Butley J. Rodrigue, married to Butley J. Rodrigue, and of that marriage were born two children, Angela Rae Rodrigue, born July 26, 1963, and Butley J. Rodrigue, Jr., born July 6, 1964.

## 4.

Butley J. Rodrigue greatly loved and supported his said family and was in turn greatly loved by them.

## 5.

The two said children of complainant and Butley J. Rodrigue would have received guidance, counsel-

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ling, love, affection and support from their father but for his below described untimely death.

6.

Complainant, Paulette Boudreaux Rodrigue, would have received the love, affection, support, counseling and guidance of her husband had it not been for his below described untimely death.

7.

Butley J. Rodrigue, at the moment before his death, had been a robust healthy man of the age of twenty-one years and was and had been gainfully employed by Loomis Hydraulic Testing Company, Inc. and looked forward to a long and beneficial period of employment with that company and would have received promotions and increases in his income from that company had it not been for his untimely death.

8.

At the time up until his death, Butley J. Rodrigue was supporting his said family and was at the time of his death, earning with the said employer a steady and good income.

9.

On March 7, 1964, Butley J. Rodrigue, as a part of his duties with his said employer, went aboard

10

that certain drilling rig which rests in navigable waters within the State of Louisiana, at a point north by northwest of Burrwood, Louisiana; the said rig is further described as Federal Lease No. 031.

10.

The said drilling rig was owned and operated and maintained by Humble Oil and Refining Company and was also owned, operated and maintained by Mayronne Drilling Company.

11.

On the said date and on the said rig, Butley J. Rodrigue was killed because of the negligence of Humble Oil and Refining Company and Mayronne Drilling Company through their agents and employees.

12.

The above referred to negligence includes the failure to properly maintain and equip the said rig and keep it free of obstacles.

13.

The doctrine of Res Ipsa Loquitur is hereby specially pleaded.

14.

Butley J. Rodrigue, at the time of his death, was on the said rig as a business visitor and was owed

a high degree of care by the said Humble Oil and Refining Company and Mayronne Drilling Company.

## 15.

Because the said injury occurred on navigable waters, the application of the general maritime rules of law with respect to maritime wrongs is hereby specially pleaded.

## 16.

Because of the premises, complainant, Paulette Boudreaux Rodrigue, has been damaged by the loss of love, affection, counsel and guidance and assistance in the up-bringing of their children in the full and true sum of One Hundred Fifty Thousand and No/100 (\$150,000.00) Dollars, and for the loss of support in the full and true sum of Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars.

## 17.

Angela Rae Rodrigue has been damaged by the loss of love, affection, counselling and guidance because of the premises and this loss is valued at Sixty Thousand and No/100 (\$60,000.00) Dollars; the loss of support which Angela Rae Rodrigue has sustained because of the premises is valued at Thirty-five Thousand and No/100 (\$35,000.00) Dollars.

Butley J. Rodrigue, Jr. has been damaged by the loss of love, affection, counselling and guidance because of the premises and this loss is valued at Sixty-Two Thousand and No/100 (\$62,000.00) Dollars; the loss of support which Butley J. Rodrigue, Jr. has sustained because of the premises is valued at Thirty-six Thousand No/100 (\$36,000.00) Dollars.

WHEREFORE, complainants pray that defendant be served with a copy of this complaint and cited to answer same, and after due delays and proceedings had there be judgment herein in favor of complainant, Paulette Boudreaux Rodrigue, in the full and true sum of Four Hundred Thousand and No/100 (\$400,000.00) Dollars, and in favor of Paulette Boudreaux Rodrigue as tutrix of Angela Rae Rodrigue in the full and true sum of Ninety-five Thousand and No/100 (\$95,000.00) Dollars, and in favor of Paulette Boudreaux Rodrigue as tutrix of Butley J. Rodrigue, Jr. in the full and true sum of Ninety-eight Thousand and No/100 (\$98,000.00) Dollars, all said judgments being rendered against the defendants, with interest as the law provides.

Complainants further pray that this case be tried by jury; and

For all costs in these proceedings; and



For all general and equitable relief.

O'NEAL & WAITZ,

By: PHILIP E. HENDERSON,

(Philip E. Henderson),

Houma, Louisiana,

Attorneys for Complain-  
ants.

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FILED: November 30, 1965.

(Title Omitted.)

Numbers 3109 and 3298.

**MOTION TO DISMISS.**

TO THE HONORABLE, THE UNITED STATES DIS-  
TRICT COURT FOR THE EASTERN DISTRICT OF  
LOUISIANA, BATON ROUGE DIVISION:

NOW INTO COURT, comes Aetna Casualty and  
Surety Company, Rubin W. Mayronne, Jr. d/b/a  
Mayronne Drilling Company, and Humble Oil and  
Refining Company, and moves the Court in each of  
the above numbered and entitled civil actions as fol-  
lows:

1.

To dismiss Aetna Casualty and Surety Company  
as a party defendant under the authority of *Guess*  
*v. Read*, 290 F. 2d 622 on the ground that the acci-

dent complained of herein is stipulated to have occurred more than one marine league from the nearest point of land.

## 2.

To dismiss Rubin W. Mayronne, Jr. d/b/a Mayronne Drilling Company on the ground that both petitioner and Rubin W. Mayronne, Jr. d/b/a Mayronne Drilling Company are citizens and residents of the State of Louisiana and that therefore no diversity of citizenship exists as required in civil actions in the Federal Courts of the United States.

## 3.

To dismiss the action as against Aetna Casualty and Surety Company, Rubin W. Mayronne, Jr. d/b/a Mayronne Drilling Company and Humble Oil and Refining Company because the cause of action for death under the Louisiana Law is not applicable more than one marine league from shore, and it is stipulated that the cause of action in the instant suits arose more than one marine league from shore.

## 4.

In the alternative, to dismiss Humble Oil and Refining Company, Rubin W. Mayronne, Jr. d/b/a Mayronne Drilling Company, and Aetna Casualty and Surety Company because even if the Court

should hold that the cause of action for death under the Louisiana Law extends beyond one marine league from shore, complainant is estopped from urging this cause of action under the authority of *Kent v. Shell Oil Company*, 286 F. 2d 746.

WHEREFORE movers pray that they be dismissed from each of the above numbered and entitled civil actions.

Respectfully submitted:

ADAMS AND REESE,

By (S.) RICHARD C. BALDWIN,

(Richard C. Baldwin),

Attorney for Humble Oil &  
Refining Co., Aetna Cas-  
ualty & Surety Co., Rubin  
W. Mayronne, Jr., d/b/a  
Mayronne Drilling Com-  
pany.

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Filed: December 6, 1965.

(Title Omitted.)

Numbers 3109 and 3298.

**ORDER.**

Considering the motion for consolidation of the captioned matters;

IT IS ORDERED that the captioned cases be, and the same are hereby consolidated.

Baton Rouge, Louisiana, December 6, 1965.

(S.) E. GORDON WEST,

Judge.

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(Title Omitted.)

Numbers 3109 and 3298.

**MINUTE ENTRY:**

December 17, 1965.

WEST, J.

These causes came on for hearing this day on motions by defendants, Aetna Casualty & Surety Co., Humble Oil & Refining Co., and Rubin W. Mayronne, d/b/a Mayronne Drilling Co., (1) to dismiss and (2) for leave to file impleading petition.

No counsel are present.

The Court having previously been informed by counsel that these motions would be submitted without oral argument,

IT IS ORDERED that defendants' motion to dismiss be, and it is hereby, GRANTED as to Aetna Casualty & Surety Co., but DENIED as to Humble Oil & Refining Co. and Rubin W. Mayronne, d/b/a Mayronne Drilling Co.

IT IS FURTHER ORDERED that defendants' motion for leave to file impleading petition be, and it is hereby, DENIED.

(S.) E. G. W.

Philip E. Henderson, Esq.  
Thomas W. Thorne, Jr., Esq.  
Bernard J. Caillouet, Esq.  
Richard C. Baldwin, Esq.



Filed: September 21, 1966.

(Title Omitted.)

Number 3298.

**MOTION TO DISMISS ON GROUNDS OF  
PRESCRIPTION.**

NOW INTO COURT, through undersigned counsel, come the defendants herein, and moves the Court to dismiss this suit on the grounds that said suit was filed more than one year after the date the cause of action arose and that therefore same is prescribed under the provisions of Article 2315 of the Louisiana Civil Code.

Respectfully submitted,  
ALEXANDER COCKE AND  
ADAMS AND REESE,  
By (S.) RICHARD C. BALDWIN,  
(Richard C. Baldwin),  
Attorney for defendants,  
. 847 National Bank of  
Commerce Bldg.,  
New Orleans, Louisi-  
ana,  
529-4655.

(Memorandum in support of foregoing motion not  
copied herein; included in original record No. 3298.)

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA.**

**No. 3109 Civil Action.**

**PAULETTE BOUDREAUX RODRIGUE,**  
**Plaintiff,**

**versus**

**THE AETNA CASUALTY AND SURETY COMPANY and  
HUMBLE OIL AND REFINING COMPANY,**  
**Defendants.**

**JUDGMENT.**

This cause came on for trial before the Court and a jury, Honorable E. Gordon West, District Judge, presiding, and the Court dismissed the action before trial assigning oral reasons therefor. Now,

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment be entered in favor of the remaining defendant, Humble Oil and Refining Company, and against plaintiff, Paulette Boudreaux Rodrigue, widow of Butley J. Rodrigue and administratrix of the estate of her two minor children, Angela Rae Rodrigue, and Butley J. Rodrigue, Jr., dismissing plaintiff's suit at her cost.

Baton Rouge, Louisiana, October 21, 1966.

A. DALLAM O'BRIEN, JR.,  
Clerk,

By (S.) C. H. BANTA,  
Deputy Clerk,

(S.) E. G. W.

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA.**

**No. 3298 Civil Action.**

**PAULETTE BOUDREAUX RODRIGUE,**  
**Plaintiff,**

**versus**

**RUBIN W. MAYRONNE, JR., d/b/a MAYRONNE  
DRILLING COMPANY,**  
**Defendant.**

**JUDGMENT.**

This cause came on for trial before the Court and a jury, Honorable E. Gordon West, District Judge, presiding, and the Court dismissed the action before trial assigning oral reasons therefor. Now,

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of the remaining defendants, Rubin W. Mayronne, Jr., d/b/a Mayronne Drilling Company, and Humble Oil and Refining Company, and against plaintiff, Paulette Boudreaux Rodrigue, widow of Butley J. Rodrigue and tutrix of and administratrix of the estate of her minor children, Angela Rae Rodrigue and Butley J. Rodrigue, Jr., dismissing plaintiff's suit at her cost.

Baton Rouge, Louisiana, October 21, 1966.

A. DALLAM O'BRIEN, JR.,  
Clerk,

By (S.) C. H. BANTA,  
Deputy Clerk,

(S.) E. G. W.

Transcript of Ruling of the Court, dismissing Civil Actions 3109 and 3298, made in Open Court on September 21, 1966, at the United States Courthouse, Baton Rouge, Louisiana; the Honorable E. Gordon West, United States District Judge, presiding.

**Appearances:**

Messrs. O'Neal & Waitz, By: A. Deutsch O'Neil, Sr., Esq., and Philip E. Henderson, Esq., Houma, Louisiana, Attorneys for Plaintiffs.

Messrs. Lemle & Kelleher, By: Thomas W. Thorne, Jr., Esq., National Bank of Commerce Building, New Orleans, Louisiana, Attorneys for Employers National Insurance Company.

Alexander C. Cocke, Esq., P. O. Box 60626, New Orleans, Louisiana, Attorney for Humble Oil & Refining Company, Defendant.

**ORAL REASONS FOR JUDGMENT.**

**The Court:**

During the recess, the Court took under advisement for reconsideration the motions which had pre-

viously been filed by the defendants in the civil suits and the respondents in the admiralty action to dismiss each of the three actions, the diversity action number 3109, the outer continental shelf action, number 3298, and the admiralty action, number 810.

Let the record further show that after hearing argument of counsel during the noon recess and after reconsidering all of the briefs that have previously been filed in this matter, together with a reconsideration of the law that I believe to be applicable to these motions, I will make the following rulings with the understanding that these rulings supersede and take the place of any contrary rulings that I might have previously made with regard to these or similar motions in these three cases.

First, with regard to Civil Action 3109, which is a case based not on the allegation of the applicability of the outer continental shelf act, but simply on diversity of citizenship with more than ten thousand dollars involved, the Court is of the opinion that that suit should be dismissed on the ground that this accident, by agreement of counsel, as contained in the pre-trial order, occurred more than a marine league off the coast of Louisiana in the area known as the outer continental shelf. Thus, there is no jurisdiction in this Court over an action being as I say an action brought on a suit occurring outside of the State of Louisiana.



Insofar as Civil Action 3298 is concerned, this is an action brought specifically under the provisions of the outer continental shelf act. It is the defendant's contention in this suit that this matter is barred by prescription because of the fact that suit was filed more than one year, but less than two years, following the accident, and the defendant contends that if as declared in the outer continental shelf act the Law of Louisiana is extended to cover this situation, not only must the provisions of Article 2315 of the Civil Code providing for an action for wrongful death be extended, but also the one year prescriptive period must be extended and thus the case will be prescribed by one year. It is the defendant's further contention in support of the motion that the outer continental shelf act would only make state law applicable to this area to fill a void not provided for in federal law, and that if in fact federal law did grant to the plaintiffs a right of action for wrongful death, then they could not also have the advantage of the extension of state law under the outer continental shelf act. The defendant further claims that if Article 2315 is extended under the provisions of the outer continental shelf act, that then of necessity, the Louisiana Workmen's Compensation law would be extended, thus limiting the right of plaintiff to sue in workmen's compensation because of the fact that he was performing part of the trade, business or occupation of the prime contractor.

The defendant further claims in connection with this suit that under the holding of *Pure Oil Company versus Snipes*, 293 Fed. (2) at page 60, that Article 2315 of the Louisiana Civil Code does not, in fact, cover this case, but that instead the Federal law must cover. Of course, needless to say, counsel for plaintiff disagrees with all of these contentions and argues, and cited his authorities therefor. It is the opinion of this Court that suit 3298 must also be dismissed and that this suit must proceed as a suit in admiralty under the "Death on the High Seas" statute.

In *Pure Oil versus Snipes*, in a very detailed opinion by Judge Brown of the Fifth Circuit Court of Appeals, it was specifically and categorically held that the one year prescriptive period of Article 2315 did not apply to an accident occurring on a fixed platform outside of the Continental Limits of the State of Louisiana, and that in fact Louisiana law did not apply, but that Federal Maritime law would apply. Rightly or wrongly, this is the specific holding in *Pure Oil versus Snipes*. It is the reasoning of the Court in *Pure Oil versus Snipes*, referring particularly to the question of the applicability of the Workmen's Compensation Statute, that Congress did not intend to apply such laws to an accident happening on a fixed platform, and they referred specifically to the limitations placed upon an employee to sue his employer, and Judge Brown says, that in the opinion of that Court, Congress did not intend to place such varied restrictions on employees working in the

outer continental shelf area as would be applied if the laws of all of the various states bordering on navigable waters were applied rather than the laws of Federal Maritime—provisions of Federal Maritime law.

You will recall that in that case, Judge Brown further pointed to the fact that the outer continental shelf act contemplated the Longshoremen and Harborworkers Act as the remedy for a person injured on a fixed platform located outside of the limits of the state, and he pointed to that along with other provisions of the act that indicated clearly the intent of Congress to apply not state law but Federal law and then more specifically the Federal Maritime law to accidents happening in this area.

So we come now to the question of Federal Maritime law. If we are to say as the Snipes case did say, that Louisiana law does not apply, then we must conclude that Article 2315 of the Louisiana Civil Code does not apply but that Federal Maritime law which does give a right of action for wrongful death must apply. In other words, the void is not there by saying that 2315 does not apply. It does not create a void in which the plaintiff would find herself without a cause of action; on the contrary, to hold as I am holding would carry out specifically the mandate of the Snipes case and at the same time would not deprive the plaintiff of a right of action for wrongful death, because if we apply Maritime law as Judge Brown said in the Snipes case must be applied, then Death

on the High Seas is the maritime law and the Death on the High Seas statute does provide for wrongful death and, consequently, both the intent of Congress and the interpretation at least in the Snipes case and the rights of the plaintiff are preserved and protected.

So I will dismiss, and grant the motion to dismiss 3298, which is the action based upon the outer continental shelf act against Rubin W. Mayronne, Jr., doing business as Mayronne Drilling Company, as the only defendant.

This will leave the suit as one in admiralty to be tried without a jury to the Court alone with the defendants being Rubin W. Mayronne, Jr., doing business as Mayronne Drilling Company, and Humble Oil and Refining Company. I believe that is correct, is it not?

Mr. Baldwin:

Yes, sir.

The Court:

With that explanation, gentlemen, and after much much thought and all the study that I know how to give to this very disturbing, and I might say mixed-up problem, that is the conclusion that I find that I must inevitably come to.

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

**October Term, 1967.**

**No. 24504.**

**D. C. Docket Nos. CA 3109 & CA 3298.**

**PAULETTE BOUDREAUX RODRIGUE, ETC.,**  
**Appellant,**

**versus**

**AETNA CASUALTY AND SURETY COMPANY, ET AL.,**  
**Appellees.**

**Appeal from the United States District Court for the  
Eastern District of Louisiana.**

**Before BELL, AINSWORTH and GODBOLD, Circuit  
Judges.**

**JUDGMENT.**

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellant, Paulette Boudreaux Rodrigue, Etc., be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

May 16, 1968

Issued as Mandate: JUN 7 1968



**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

**No. 24504**

**PAULETTE BOUDREAUX RODRIGUE, ETC.,  
Appellant,  
versus**

**AETNA CASUALTY AND SURETY COMPANY, ET AL.,  
Appellees.**

**Appeal from the United States District Court for the  
Eastern District of Louisiana.**

**(May 16, 1968.)**

**Before BELL, AINSWORTH and GODBOLD, Circuit  
Judges.**

**PER CURIAM:** Appellant's husband was killed in an accident on the derrick of a drilling rig on a fixed-structure located on the Outer Continental Shelf approximately 28 miles south of Grand Isle, Louisiana. The District Judge dismissed appellant's civil suits based upon Louisiana's Death Statute (La. R.C.C. Art. 2315) but retained jurisdiction over her suit in Admiralty under the Death on the High Seas Act (46 U.S.C. § 671, et seq.) and awarded a substantial judgment under that Act.

The contention that under Section 4 of the Outer Continental Shelf Lands Act (43 U.S.C. § 1331), appellant may bring an action for damages under the Louisiana Death Statute (La. R.C.C. Art. 2315) has recently been decided by us adversely to the contentions of appellant. In *Dore, et al. v. Link Belt Co., et al.*, 5 Cir., 1968, .... F.2d .... [No. 24370 decided March 25, 1968], we held that the exclusive remedy under these circumstances is the Death on the High Seas Act. We are not persuaded that we should change our holding in *Dore*, which is supported by three recent decisions of this Court in *Loffland Brothers Company v. Roberts*, 5 Cir., 1967, 386 F. 2d 540, cert. denied, .... U. S. ...., .... S. Ct. .... (1968); *Ocean Drilling & Exp. Co. v. Berry Bros. Oilfield Service*, 5 Cir., 1967, 377 F. 2d 511; and *Pure Oil Co. v. Snipes*, 5 Cir., 1961, 293 F. 2d 60.

AFFIRMED.

Filed: .....

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

**Civil Action No. 11662.**

**ELLA MAE DUBOIS DORE, Individually and as Ad-  
ministratrix of the Estate of Joseph Dore, and as  
Natural Tutrix of and for and on behalf of the minors,  
Rodney James Dore, Vickie Ann Dore and Jo Ella  
Dore,**

**Plaintiffs,**

**versus**

**THE LINK BELT COMPANY AND LINK BELT  
SPEEDER CORPORATION,**

**Defendants.**

**COMPLAINT.**

Plaintiffs, for their complaint, allege as follows:

**First.**

Plaintiffs are residents of the Parish of Iberia, State of Louisiana, and at the time of his death Joseph Dore was a resident of the Parish of Iberia, State of Louisiana.

**Second.**

Defendants are nonresident corporation doing business in the State of Louisiana and within the jurisdiction of this Court.

**Third.**

The damages sued for hereunder are in excess of \$10,000.00, exclusive of interest and costs.

**Fourth.**

Joseph Dore was the husband of Ella Mae Dubois Dore and the father of Rodney James Dore, Vickie Ann Dore and Jo Ella Dore, all minors, and Joseph Dore and Ella Mae Dore were living together as man and wife at the time of his death and prior thereto and the three children of Joseph Dore herein named were living with Joseph Dore, were dependent upon him and were being cared for and supported by him at the time of his death.

**Fifth.**

Joseph Dore was married only once and then to Ella Mae Dubois Dore and the three children hereinabove named are the only children who survived Joseph Dore.

**Sixth.**

On or about March 14, 1965, Joseph Dore was killed while working on an offshore drilling rig at South

Marsh Island Block 51 in the Gulf of Mexico, about fifty miles south of Marsh Island, Iberia Parish, Louisiana; when a crane which was sold, manufactured, supplied and installed by the Link Belt Company and Link Belt Speeder Corporation collapsed and fell a distance of more than sixty feet.

#### **Seventh.**

The accident and death of Joseph Dore were caused through the negligent acts and omissions of the Link Belt Company and Link Belt Speeder Corporation, and other persons and corporations whose identities are presently unknown to complainants and which are presently designated as A B & C companies, and John Doe, in negligently designing, manufacturing, assembling, selling, installing and servicing a crane known and designated as Link Belt Speeder TC-78A Commercial Standard 90-58, on a rig at South Marsh Island Block 51, on which Joseph Dore was killed.

#### **Eighth.**

Joseph Dore was operating the crane at the time of the accident and his death and defendants were also negligent in failing to warn him of the hazards and dangers involved.

#### **Ninth.**

The Link Belt crane which collapsed and caused the death of Joseph Dore was an extremely and

inherently dangerous instrumentality, sold by the Link Belt Company to Shell Oil Company, it was a new crane and it was sold to Shell Oil Company with the knowledge that it would be used by Joseph Dore and other employees of Shell Oil Company on an oil well drilling rig, in offshore operations situated high above the rig and water on a pedestal; and that it would be used and operated by Joseph Dore and other employees of Shell Oil Company in work of the nature and type which it was being used for at the time of the death of Joseph Dore.

**Tenth.**

Defendants are liable to plaintiffs under express and implied warranties as manufacturers, assemblers, sellers and installers of the crane.

**Eleventh.**

Plaintiffs bring this action under the General Maritime Laws, the Death of the High Seas Act, 46 USCA 761, et seq., Article 2315 of the Revised Civil Code of the State of Louisiana and under the other laws of the United States and the State of Louisiana.

**Twelfth.**

Plaintiffs have suffered pecuniary losses, expenses and damages by reason of the death of Joseph Dore, including loss of love and affection, loss of support and inheritance, loss of material aid and services, loss of parental guidance, loss of society and com-



panionship, pain and suffering, anguish and shock totalling \$670,000.00.

**Thirteenth.**

Amicable demand has been made upon defendants but without avail.

WHEREFORE, complainants pray for judgment as their interest may appear, jointly, severally and in solido, in the sum of \$670,000.00 together with legal interest from date of judicial demand until paid, all costs and expenses of this proceeding; and complainants further pray for a trial by jury.

LANDRY, WATKINS, COUSIN  
& BONIN,

By (S.) ALFRED S. LANDRY,  
Attorneys for Plaintiffs,  
211 East Main Street,  
New Iberia, Louisiana.

Filed: January 10, 1966.

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(Title Omitted.)

No. 11,662.

**SUPPLEMENTAL AND AMENDED COMPLAINT.**

Plaintiffs amend the complaint originally filed by them in this proceeding by reiterating the allega-

tions of the first, third, fourth, fifth, eighth, tenth, eleventh, twelfth and thirteenth articles or paragraphs of the complaint, by amending the second, sixth, seventh, and ninth articles of the complaint as well as the prayer of the complaint and by adding the fourteenth article, the amended and added portion reading as follows:

**"Second.**

Defendants, The Link Belt Company and Link Belt Speeder Corporation are nonresident corporations doing business in the State of Louisiana and within the jurisdiction of this court, and defendant, Road Equipment Company, Inc. is a Louisiana corporation and within the jurisdiction of this court."

**"Sixth.**

On or about March 14, 1965, Joseph Dore was killed while working an offshore drilling rig at South Marsh Island Block 51 in the Gulf of Mexico, about fifty miles south of Marsh Island, Iberia Parish, Louisiana, when a crane which was sold, manufactured, supplied and installed by The Link Belt Company, Link Belt Speeder Corporation and Road Equipment Company, Inc., collapsed and fell a distance of more than 60 feet."

**"Seventh.**

The accident and death of Joseph Dore were caused through the negligent acts and omissions of

The Link Belt Company, Link Belt Speeder Corporation and Road Equipment Company, Inc., and other persons and corporations whose identities are presently unknown to complainants and which are presently designated as A B & C companies and John Doe, in negligently designing, manufacturing, assembling, selling, installing and servicing a crane known and designated as Link Belt Speeder TC-78A Commercial Standard 90-58, on a rig at South Marsh Island Block 51, on which Joseph Dore was killed."

**"Ninth.**

The Link Belt crane which collapsed and caused the death of Joseph Dore was an extremely and inherently dangerous instrumentality, sold by The Link Belt Company, Link Belt Speeder Corporation and Road Equipment Company, Inc. to Shell Oil Company, it was a new crane and it was sold to Shell Oil Company with the knowledge that it would be used by Joseph Dore and other employees of Shell Oil Company on an oil well drilling rig, in offshore operations situated high above the rig and water on a pedestal; and that it would be used and operated by Joseph Dore and other employees of Shell Oil Company in work of the nature and type which it was being used for at the time of the death of Joseph Dore."

**"Fourteenth.**

Complainants attach hereto and make part hereof a copy of the complaint and interrogatories originally filed in this proceeding."

WHEREFORE, complainants reiterate the allegations of the original petition, as embodied herein, and pray for judgment as their interest may appear, jointly, severally and in solido, in the sum of Six Hundred Seventy Thousand and No/100 (\$670,000.00) Dollars, together with legal interest from date of judicial demand until paid, all costs and expenses of this proceeding; and complainants further pray for a trial by jury.

LANDRY, WATKINS, COUSIN  
& BONIN,

Attorneys for Plaintiffs.

By (S.) ALFRED S. LANDRY,  
(Alfred S. Landry),  
211 East Main Street,  
New Iberia, Louisiana.

Filed: March 10, 1966.

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(Title Omitted.)

No. 11,662.

**MOTION OBJECTING TO THE VENUE OR  
JURISDICTION OF COURT.**

NOW INTO COURT, through undersigned counsel, comes ROAD EQUIPMENT COMPANY, INC., which moves for judgment dismissing the above numbered and entitled cause insofar as it is against ROAD EQUIPMENT COMPANY, INC.

## 1.

It is specifically alleged that Road Equipment Company, Inc. is not domiciled in the Western District and that the alleged accident did not occur in the Western District; it is further specifically averred that there is no diversity of citizenship and no jurisdiction or venue in this court.

WHEREFORE, defendant prays that there be judgment herein dismissing the plaintiff's cause of action against Road Equipment Company, Inc. and for all general and equitable relief.

VOORHIES, LABBE, FONTE-  
NOT, LEONARD & McGLAS-  
SON,

By (S.) H. LEE LEONARD,  
(H. Lee Leonard),  
Post Office Box 3527,  
Lafayette, Louisiana.

Filed: June 8, 1966.

(Title Omitted.)

No. 11,662.

**MOTIONS TO DISMISS ON BEHALF OF THE LINK  
BELT COMPANY.**

TO THE HONORABLE, THE UNITED STATES DISTRICT COURT IN AND FOR THE WESTERN DISTRICT OF LOUISIANA, LAFAYETTE DIVISION:

NOW INTO COURT, through undersigned counsel, comes and appears THE LINK BELT COMPANY, sought to be made defendant in the above entitled and numbered cause, who, moves to dismiss the complaint on the following grounds:

**MOTION TO DISMISS FOR LACK OF PROPER VENUE.**

I.

Defendant moves to dismiss the complaint on the basis that the action is not based on diversity and neither defendants to the suit are residents of the District wherein the action is brought.

**MOTION TO DISMISS ON THE BASIS THAT THE  
COMPLAINT FAILS TO STATE A CAUSE OF  
ACTION ON WHICH RELIEF CAN BE GRANTED.**

II.

Alternatively; and only in the event the Court should find that there is proper venue in the West-



ern District (which is denied) then and in that event defendant moves to dismiss the complaint on the basis that the complaint does not state a claim upon which relief can be granted for the following reasons:

a) The alleged accident is alleged to have occurred in the complaint, on South Marsh Island Block 51 in the Gulf of Mexico, approximately fifty miles south of Marsh Island and, accordingly, the Death on the High Seas Act, 46 U.S.C.A. 761, et seq. will be not only the applicable but exclusive cause of action which according to the Act, has to be brought in admiralty and, accordingly, on the Admiralty side of Court without a jury.

b) The General Maritime Law is not applicable because of the exclusive remedy under the Death on the High Seas Act.

c) Article 2315 of the Louisiana Civil Code of 1870 is not applicable because the Death on the High Seas Act is the exclusive remedy.

d) The complainants, the wife and children of the deceased, are not the proper party plaintiffs inasmuch as the Death on the High Seas Act requires the personal representative to institute the action.

e) The Death on the High Seas Act limits recovery to pecuniary loss so that all other allegations of damages should be dismissed.

**ALTERNATIVELY, MOTION FOR SUMMARY  
JUDGMENT.**

**III.**

Alternatively, and only in the event the Court should find that the suit has been brought in the proper venue and overrules the motion to dismiss as set forth in Article II herein, defendant moves for summary judgment on the basis set forth in Article II with supporting evidentiary material.

WHEREFORE, premises considered, defendant, THE LINK BELT COMPANY, mover herein, hereby prays as follows:

a) The suit be dismissed on the basis of improper venue and, alternatively, that the suit be transferred to the United States District Court for the Eastern Division of the State of Louisiana;

b) Alternatively, if the motion to dismiss for improper venue is overruled, that the petition be dismissed for failure to state a cause of action on which relief can be granted and, alternatively, that the suit be transferred to the Admiralty Docket of this Court; and

c) If the Court overrules the previous two motions, that the motion for summary judgment be granted.

AND FOR ALL GENERAL AND EQUITABLE RELIEF, ETC.

DAVIDSON, MEAUX, ONE-  
BANE & DONOHUE,

By (S.) JAMES E. DIAZ,  
Attorneys for the Link Belt  
Company,  
201 West Main Street,  
Lafayette, Louisiana.

RICHARD C. MEAUX  
and JAMES E. DIAZ,  
Trial Attorneys.

Filed: July 28, 1966.

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(Title Omitted.)

No. 11662.

### JUDGMENT OF THE COURT.

The motions of defendants, on motion to dismiss for lack of proper venue and motion to dismiss on the basis that the complaint fails to state a cause of action on which relief can be granted, having been submitted to the Court and after considering the pleadings, arguments and briefs of counsel for plaintiffs and defendants,

IT IS ORDERED, ADJUDGED AND DECREED that the motion to dismiss for lack of proper venue is overruled.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this civil action be transferred and removed to the Admiralty side of Court.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Ella Mae Dubois Dore, as administratrix of the estate of Joseph Dore, for the benefit of herself and the minors, Rodney James, Vickie Ann and Jo Ella Dore, is under the Death on the High Seas Act, 46 U.S.C.A. Section 761, et seq., the only party plaintiff who has a standing in this Court and, accordingly, that the other party plaintiffs in this action, Ella Mae Dubois Dore, individually and as natural tutrix of the minors, Rodney James, Vickie Ann and Jo Ella Dore, be dismissed from this suit.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that all items of damages referred to in the complaint herein other than for pecuniary loss sustained by the persons for whose benefit the suit is brought, shall be stricken from the complaint.

Thus Done and Signed at Lafayette, Louisiana, this  
.... day of October, 1966.

(S.) R. J. PUTNAM,  
District Judge.

APPROVED AS TO FORM:

LANDRY, WATKINS, COUSIN  
& BONIN,

By (S.) ALFRED S. LANDRY,  
Attorneys for Plaintiffs.

VOORHIES, LABBE, FONTE-  
NOT, LEONARD & McGLAS-  
SON,

By (S.) H. LEE LEONARD,  
Attorneys for Road Equip-  
ment Company.

Filed: October 26, 1966.

Filed Feb. 19, 1968.

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF LOUISIANA  
LAFAYETTE DIVISION**

**CIVIL ACTION Number 11662.**

**ELLA MAE DUBOIS DORE, Individually, etc.,  
versus  
THE LINK BELT COMPANY, et al.**

**ORDER.**

It having been brought to the attention of the Court that the judgment dismissing the claims of plaintiffs in the above-captioned cause brought under Article 2315 of the Louisiana Revised Civil Code of 1870, LSA-C.C. Art. 2315, did not contain an express determination by this Court that there was no just reason for delay and further did not expressly direct the entry of a judgment of dismissal, and further that at the time of ruling on the defendants' motion to dismiss said claim, the Court declared that its action was to be taken as final on this claim and the omission of such statement as required by Rule 54(b), Federal Rules of Civil Procedure, from said judgment was inadvertent, it is now:

ORDERED that the formal judgment signed by the Court on October 26th, 1966, hereinabove mentioned be and the same is hereby amended so that the dismissal of plaintiffs' claims under Article 2315 of the Louisiana Revised Civil Code of 1870 is deter-



mined and declared to be a final judgment of dismissal and it is further expressly determined by this Court that there is no just reason to delay the dismissal of such claims or the entry of judgment in accordance with such order, the whole as required by Rule 54(b), F.R.C.P.

IT IS FURTHER ORDERED that the foregoing amendment be filed and forwarded to the Clerk of the United States Court of Appeals for the Fifth Circuit, for filing in the record of this cause, the issues presented by the dismissal of such claims being pending before said court on appeal at this time.

Lafayette, Louisiana, February 14, 1968.

(S.) RICHARD J. PUTNAM,

United States District Judge.

The above and foregoing order is agreed upon and stipulated to be necessary in this cause by the undersigned counsel of record, and the said counsel further waive any objections thereto.

Lafayette, Louisiana, this 14th day of February, 1968.

LANDRY, WATKINS, COUSIN  
& BONIN,

By (S.) ALFRED S. LANDRY,

(Alfred S. Landry),

Attorneys for Plaintiffs-  
Appellants.

• DAVIDSON, MEAUX, ONE-  
BANE & DONOHUE,

By (S.) JAMES E. DIAZ,  
 (James E. Diaz),  
 Attorneys for Defendants-  
 Appellee, Link Belt  
 Company.

VOORHIES, LABBE, FONTE-  
 NOT, LEONARD & McGLAS-  
 SON,

By (S.) H. LEE LEONARD,  
 (H. Lee Leonard),  
 Attorneys for Defendant-  
 Appellee, Road Equip-  
 ment Company, Inc.

**UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

**October Term, 1967.**

**No. 24370.**

**D. C. Docket No. CA 11662.**

**ELLA MAE DUBOIS DORE, Individually and as Natural  
Tutrix of and for and on behalf of her minor children,  
RODNEY JAMES DORE, VICKIE ANN DORE and  
JO ELLA DORE,**

**Appellants,**

**versus**

**THE LINK BELT COMPANY, ET AL.,  
Appellees.**

**Appeal from the United States District Court for the  
Western District of Louisiana.**

**Before GEWIN, BELL and AINSWORTH, Circuit Judges.**

**JUDGMENT.**

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was argued by counsel;

**ON CONSIDERATION WHEREOF, It is now here  
ordered and adjudged by this Court that the judg-**

ment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellants, Ella Mae Dubois Dore, individually and as Natural Tutrix of and for and on behalf of her minor children, Rodney James Dore, Vickie Ann Dore and Jo Ella Dore, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

March 25, 1968

Issued as Mandate: May 23, 1968

IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

No. 24370

**ELLA MAE DUBOIS DORE**, Individually and as Natural  
Tutrix of and for and on behalf of her minor children,  
**RODNEY JAMES DORE, VICKIE ANN DORE and**  
**JO ELLA DORE,**

Appellants,

versus

**THE LINK BELT COMPANY, ET AL.,**  
Appellees.

Appeal from the United States District Court for the  
Western District of Louisiana.

(March 25, 1968.)

Before GEWIN, BELL and AINSWORTH, Circuit  
Judges.

AINSWORTH, Circuit Judge: The issue with which we are concerned is whether the Death on the High Seas Act, 46 U.S.C. § 761, et seq.,<sup>1</sup> is the exclusive

<sup>1</sup> The pertinent provisions of the Death on the High Seas Act follow:

46 U.S.C. § 761:

"Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State . . . the personal representative of the decedent may maintain a suit

remedy of claimants in an action growing out of the death of an oil field worker which occurred on a stationary offshore drilling platform on the outer Continental Shelf of the Gulf of Mexico beyond a marine league from the Louisiana shore. Plaintiffs, who are the surviving wife and children of the deceased worker, contend that the Act, which provides for recovery only for the pecuniary loss sustained, should be supplemented by Louisiana statutory law which provides a broader remedy for damages.<sup>2</sup>

for damages in the district courts of the United States, in admiralty, . . . ."

46 U.S.C. § 762:

"The recovery in such suit shall be a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought . . . ."

46 U.S.C. § 763:

"Suit shall be begun within two years from the date of such wrongful act . . . ."

46 U.S.C. § 766:

"In suits under this chapter the fact that the decedent has been guilty of contributory negligence shall not bar recovery, but the court shall take into consideration the degree of negligence attributable to the decedent and reduce the recovery accordingly."

46 U.S.C. § 767:

"The provisions of any State statute giving or regulating rights of action or remedies for death shall not be affected by this chapter. Nor shall this chapter apply to the Great Lakes or to any waters within the territorial limits of any State, or to any navigable waters in the Panama Canal Zone."

<sup>2</sup> Louisiana statutory law on the subject is found in Louisiana Revised Civil Code Art. 2315, which provides in pertinent part as follows:

"Every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it."

"The right to recover damages to property caused by an offense or quasi offense is a property right which, on the death of the obligee, is inherited by his legal, instituted, or irregular heirs, subject to the community rights of the surviving spouse."

"The right to recover all other damages caused by an offense or quasi offense, if the injured person dies, shall survive for a period of one year from the death of the deceased in favor



Pursuant to motions to dismiss of defendants, The Link Belt Company and Road Equipment Company, the district court entered judgment against plaintiffs, limiting them to a claim in Admiralty for pecuniary loss under the Death on the High Seas Act.<sup>3</sup>

Plaintiffs appealed from the judgment and specify the following errors:

"The lower court erred in holding that the plaintiffs, Ella Mae Dubois Dore, individually and as natural tutrix of the minors, Rodney James, Vickie Ann and Jo Ella Dore, had no standing in court; and in holding that the exclusive remedy for the death of Joseph Dore was for 'pecuniary losses' only under the Death on the High Seas Act, 46 U.S.C.A., Section 761, et seq., in striking from the com-

of: (1) the surviving spouse and child or children of the deceased, or either such spouse or such child or children; (2) the surviving father and mother of the deceased, or either of them, if he left no spouse or child surviving; and (3) the surviving brothers and sisters of the deceased, or any of them, if he left no spouse, child, or parent surviving. The survivors in whose favor this right of action survives may also recover the damages which they sustained through the wrongful death of the deceased. A right to recover damages under the provisions of this paragraph is a property right which, on the death of the survivor in whose favor the right of action survived, is inherited by his legal, instituted, or irregular heirs, whether suit has been instituted thereon by the survivor or not."

<sup>3</sup> After this case was appealed the district judge, with our approval, amended his judgment to certify the question as required by Rule 54(b), Federal Rules of Civil Procedure. See *Cold Metal Process Co. v. United Eng. & Fdry. Co.*, 351 U. S. 445, 76 S. Ct. 904 (1956), where a similar certification after appeal was approved by the Supreme Court.

plaint all items of damage other than 'pecuniary loss' and in directing that this case be removed to the Admiralty side of the Court and that plaintiffs would not have a right to trial by jury."

Decedent, Joseph Dore, an oil field worker, was killed while working on a stationary offshore drilling platform on the outer Continental Shelf in the Gulf of Mexico south of the State of Louisiana, approximately fifty miles seaward from Marsh Island, when a crane which he was operating and which it is alleged was "sold, manufactured, supplied and installed" by defendants, The Link Belt Company and Road Equipment Company, collapsed and fell more than sixty feet.<sup>4</sup> The widow of decedent instituted a civil action on her behalf and that of the minor Dore children, alleging negligence by defendants<sup>5</sup> under the General Maritime Laws, Death on the High Seas Act, 46 U.S.C. § 761, et seq.; and Article 2315 of the Revised Civil Code of Louisiana, claiming damages for

<sup>4</sup> By stipulation between the parties filed subsequent to the hearing and attached to the trial judge's certification under Rule 54(b), Federal Rules of Civil Procedure, it was agreed that the work was being performed on the "outer Continental Shelf" and that the accident occurred in the following manner:

"That the decedent was a crane operator working on a crane on a pedestal on a stationary platform; That the crane was being used to unload a barge or vessel located immediately next to the stationary platform; That while a load was being lifted from the vessel with an intention to place it on the stationary platform, the crane toppled over with the decedent in the crane and fell to the barge or vessel below, which was being unloaded and the decedent was killed when he fell on the barge."

<sup>5</sup> There is a lack of complete diversity. Plaintiffs are citizens of Louisiana. Road Equipment Company is a Louisiana corporation. The Link Belt Company is a foreign corporation.

"loss of love and affection, loss of support and inheritance, loss of material aid and services, loss of parental guidance, loss of society and companionship, pain and suffering, anguish and shock."

Appellants contend that under the "savings-to-suitors" clause, 28 U.S.C. § 1333,<sup>6</sup> and under the Outer Continental Shelf Lands Act, 43 U.S.C. § 1331, et seq.,<sup>7</sup> state remedies are available to them in addi-

<sup>6</sup> 28 U.S.C. § 1333 provides in pertinent part:

"The district courts shall have original jurisdiction, exclusive of the courts of the States of:

"(1) Any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled."

<sup>7</sup> The pertinent parts of the Act provide:

43 U.S.C. § 1332:

"(a) It is declared to be the policy of the United States that the subsoil and seabed of the outer Continental Shelf appertain to the United States and are subject to its jurisdiction, control, and power of disposition as provided in this subchapter."

43 U.S.C. § 1333:

"(a) (1) The Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands and fixed structures which may be erected thereon for the purpose of exploring for, developing, removing, and transporting resources therefrom, to the same extent as if the outer Continental Shelf were an area of exclusive Federal jurisdiction located within a State: . . . .

"(2) To the extent that they are applicable and not inconsistent with this subchapter or with other Federal laws and regulations of the Secretary now in effect or hereafter adopted, the civil and criminal laws of each adjacent State as of August 7, 1953 are declared to be the law of the United States for that portion of the subsoil and seabed of the outer Continental Shelf, and artificial islands and fixed structures erected thereon, which would be within the area of the State if its boundaries were extended seaward to the outer margin of the outer Continental Shelf, and the President shall determine and publish in the Federal Register such projected lines extending seaward and defining each such area. All of such applicable laws shall be administered and enforced by the appropriate officers and courts of the United States.

tion to the remedy provided by the Death on the High Seas Act, 46 U.S.C. § 761, et seq.

Under the Death on the High Seas Act, when wrongful death occurs beyond a marine league from the shore of any state, a remedy is provided in Admiralty in the United States courts. Under the Outer Continental Shelf Lands Act, the laws of the United States are extended to the subsoil, seabed, artificial islands and fixed structures on the outer Continental Shelf. Laws of adjacent states, to the extent that they are applicable and not inconsistent with the Outer Continental Shelf Act or other federal laws, are under that Act declared to be the law of the United States. The site of decedent's death, fifty miles south of Marsh Island, Louisiana, on the Shelf, is in an area encompassed by both the Death on the High Seas Act and the Outer Continental Shelf Lands Act.

Appellants contend that the language of the Outer Continental Shelf Lands Act which makes applicable the laws of the adjacent state under certain circumstances requires an interpretation that the law of Louisiana is applicable.

Necessarily, Louisiana law must not be inconsistent with federal law to warrant this interpretation. Several inconsistencies between federal law and the law of Louisiana are apparent; for example, the law of Louisiana, which provides *inter alia* for broad remedies for wrongful death, such as loss of love and affection, etc., limits the time to one year within which



an action may be brought and bars recovery because of contributory negligence. In contrast, the provisions of the Death on the High Seas Act provide for pecuniary loss only, a two-year period in which an action may be brought, and mere diminution of damages in the event of comparative negligence.

Determination of which law is to apply to cases involving death of a maritime worker on the outer Continental Shelf presents a question of first impression for this Court. In the present case the death occurred beyond a marine league from shore. We have had several occasions, however, to resolve disputes centered around the question of whether federal or state law is applicable to torts, in which a maritime worker suffered personal injuries, occurring on the outer Continental Shelf. We have uniformly held that federal law is the applicable law. *Loffland Brothers Company v. Roberts*, 5 Cir., 1967, 386 F. 2d 540, cert. denied .... U. S. ...., .... S. Ct. .... (1968); *Ocean Drilling & Exp. Co. v. Berry Bros. Oilfield Service*, 5 Cir., 1967, 377 F. 2d 511; *Pure Oil Co. v. Snipes*, 5 Cir., 1961, 293 F. 2d 60.<sup>8</sup> In *Loffland*, the defendant urged that Louisiana law was applicable on the Continental Shelf, under which law recovery for physical injury would have been barred because of plaintiff's contributory negligence, as opposed to diminution of damages under the maritime concept of comparative negligence. In rejecting defendant's argument, we said (386 F. 2d at 545):

<sup>8</sup> See also *Touchet v. Travelers Indemnity Company*, D. C., W. D. La., 1963, 221 F. Supp. 376.

"In *Pure Oil Co. v. Snipes*, 293 F. 2d 60 (5 Cir. 1961) this Court carefully reviewed the Outer Continental Shelf Lands Act and concluded that Congress deemed the hazards presented by the offshore drilling platforms to be maritime in nature. We therefore held that under the Act federal maritime law was to apply to torts occurring on these offshore platforms. That decision has been consistently followed by this Court."

In *Pure Oil* plaintiff fell through an open space in a platform located on the outer Continental Shelf into the ocean below and suffered severe injuries. Defendants argued that plaintiff's right to recover had prescribed under the one-year Louisiana statute. We disagreed and said that federal and not state law was pertinent. We said (293 F. 2d at 64):

"In every sense of the word this happened on the high seas. It did not happen in Louisiana. Nor did it happen in waters which Louisiana could regard as within her territorial boundaries. . . .

"We think that a consideration of both intrinsic and extrinsic factors requires the conclusion that it was the intention of Congress that (a) this occurrence be governed by Federal, not State, law, and (b) that the Federal law thereby promulgated would be the pervasive maritime law of the United



States. In connection with the latter phase—the choice by Congress of maritime law—it is again important to keep in mind that we are in an area in which Congress has an almost unlimited power to determine what standards shall comprise the Federal law.”

While it is true that *Loffland*, *Pure Oil Co.*, and *Ocean Drilling & Exp. Co.* relate to injuries sustained by workmen and not to their death, we do not regard this distinction as decisive. The rationale of these opinions is equally and logically applicable to torts which result in death of a worker.

Appellants' further contention that their state remedies are preserved under the “savings-to-suitors” clause of 28 U.S.C. § 1333 is not tenable. We know of no theory in law under which a site in the Gulf of Mexico more than fifty miles from the shore of Louisiana can be considered as part of the State.<sup>9</sup> The conclusion is clear that there is no remedy to save under 28 U.S.C. § 1333. *Cf. Jennings v. Goodyear Aircraft Corporation*, D.C., D. Del., 1964, 227 F. Supp. 246.

<sup>9</sup> The site of the accident, approximately fifty miles seaward of Marsh Island and south of the State of Louisiana, cannot conceivably be considered within the boundary of the State of Louisiana, either under the three-mile limitation of the Submerged Lands Act, 43 U.S.C. § 1301, or by virtue of the pronouncement by the United States Supreme Court in *United States v. States of Louisiana, Etc.*, 363 U. S. 1, 80 S. Ct. 961 (1960), restricting Louisiana's submerged lands rights to an area within three geographical miles from the coastline of that State (363 U. S. at 79), but leaving unsettled the location of that coastline (363 U. S. at 65, 79).

No right or remedy existed for the death on the high seas of a non-seaman maritime worker prior to the enactment of the Death on the High Seas Act. The maritime law provided no cause of action for wrongful death. *The Harrisburg*, 119 U. S. 199, 7 S. Ct. 140 (1886). When Congress had remained silent, state death statutes were recognized and enforced by Admiralty courts in claims arising from torts on the high seas. *The Hamilton*, 207 U. S. 398, 28 S. Ct. 133 (1907). With the passage of the Death on the High Seas Act, it is pertinent to inquire whether state statutes allowing for recovery for wrongful death are preempted by the Act. The issue is a novel one for this Court, and the United States Supreme Court has made no pronouncement in this regard.

The legislative history indicates that when Congress passed the Death on the High Seas Act it intended the remedy it provided to be an exclusive one. In *Higa v. Transocean Airlines*, 9 Cir., 1955, 230 F. 2d 780, 783, 784, the Court set forth the following colloquy which occurred during the debate in the House of Representatives:

"Mr. Igoe. Does not the gentleman think that he should inform the gentleman from Ohio (Mr. Ricketts) that this proceeding will be in admiralty and that there will be no jury, so that no Member of the House may have any misunderstanding about it? That question was thrashed out and it was decided best not to

incorporate into this bill a jury trial because of the difficulties in admiralty proceedings.' (Page 4482. Emphasis added.)

"Mr. Moore of Virginia. \* \* \* The purpose of this bill, as I understand it, is to give exclusive jurisdiction to the admiralty courts where the accident occurs on the high seas.

"Mr. Volstead. That is it.' (Page 4483.) Congressional Record, Volume 59, Part V."

The Ninth Circuit concluded, "Construing the Act's words, if Higa's diversity proceeding at common law were permitted by the High Seas Act it would make superfluous its words 'in admiralty.'"<sup>10</sup>

Appellants call our attention to several federal district court decisions which give effect to state wrongful death statutes in addition to remedies under the Death on the High Seas Act.<sup>11</sup> However, there are other federal district courts whose holdings are to the contrary.<sup>12</sup> The two United States Supreme Court

<sup>10</sup> Cf. *Middleton v. Luckenbach S. S. Co.*, 2 Cir., 1934, 70 F. 2d 326.

<sup>11</sup> *Safir v. Compagnie Generale Transatlantique*, D. C., E. D. N. Y., 1965, 241 F. Supp. 501; *Cunningham v. Bethlehem Steel Co.*, D. C., S. D. N. Y., 1964, 231 F. Supp. 934; *Abbott v. United States*, D. C., S. D. N. Y., 1962, 207 F. Supp. 468; *Williams v. Moran, Proctor, Mueser & Rutledge*, D. C., S. D. N. Y., 1962, 205 F. Supp. 208.

<sup>12</sup> For holdings contrary to the above cited cases, see *Montgomery v. Goodyear Tire & Rubber Company*, D. C., S. D. N. Y., 1964, 231 F. Supp. 447; *Jennings v. Goodyear Aircraft Corporation*, D. C., Del., 1964, 227 F. Supp. 246; *Devlin v. Flying Tiger Lines, Inc.*, D. C., S. D. N. Y., 1963, 220 F. Supp. 924; *Wilson v. Transocean Airlines*, D. C., N. D. Calif., 1954, 121 F. Supp. 85; *Blumenthal*

cases cited by appellants, *Just v. Chambers*, 312 U. S. 383, 61 S. Ct. 687 (1941) and *Kernan v. American Dredging Company*, 335 U. S. 426, 78 S. Ct. 394 (1958), are inapposite to the present case. Both cases are concerned with torts occurring within state territorial waters, not on the high seas. In *Just v. Chambers*, *supra*, a yacht owner who subsequently died attempting to limit his liability in claims for injuries sustained by passengers as a result of his alleged negligence on navigable waters within the territorial limits of the State of Florida. In reversing the Fifth Circuit and affirming the district court's finding that under a statute of Florida the claimants' causes of action survived the owner's death, the Supreme Court recognized the "authority of the States to create rights and liabilities with respect to conduct within their borders, when the state action does not run counter to federal laws or the essential features of an exclusive federal jurisdiction." The Court held that it saw "no reason why, under this test, the Florida rule in providing for the survival of a cause of action against a deceased tortfeasor for injuries occurring on navigable waters within the limits of the State should not be applied." (312 U. S. at 391.) *Kernan v. American Dredging Company*, *supra*, is a limitation proceeding in which a claim for damages was filed as the result of the death of a seaman who lost his life on a tug in the Schuylkill River in Philadelphia. Apparently the language to which appellants refer is that contained at page 430

*v. United States*, D. C., E. D. Pa., 1960, 189 F. Supp. 439; *Echavarria v. Atlantic & Caribbean Steam Nav. Co.*, D. C., E. D. N. Y., 1935, 10 F. Supp. 677.



in footnote 4, where the Supreme Court in dictum says, "Presumably any claims, based on unseaworthiness, for damages accrued prior to the decedent's death would survive, at least if a pertinent state statute is effective to bring about a survival of the seaman's right." That a state death statute will be enforced in Admiralty where death occurs as the result of tortious conduct occurring upon navigable waters of a state within that state's boundaries is of course a basic principle recognized in the savings clause of 28 U.S.C. § 1333, and the uniformity of maritime law is not offended by such enforcement. See *The M/V "Tungus" v. Skovgaard*, 358 U. S. 588, 79 S. Ct. 508 (1959). However, this is not to say that such a state statute would be effective where death occurs not on the territorial waters of a state, not within a marine league from its shores, but more than fifty miles seaward of the shores of that state.

We hold, therefore, that the Death on the High Seas Act provides the exclusive remedy in this case.<sup>13</sup>

**AFFIRMED.**

<sup>13</sup> Because of our holding we need not consider appellants' further contentions, not strenuously urged, that other remedies such as the law of the domicile of defendants might be applicable, or that because the action includes a claim for breach of implied warranty state law should apply as no such remedy exists under the Death on the High Seas Act.

**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT**

**No. 24370.**

**ELLA MAE DUBOIS DORE, Individually and as Natural  
Tutrix of and for and on behalf of her minor children,  
RODNEY JAMES DORE, VICKIE ANN DORE and  
JO. ELLA DORE,**

**Appellants,**

**versus**

**THE LINK BELT COMPANY, ET AL.,  
Appellees.**

**Appeal from the United States District Court for the  
Western District of Louisiana.**

**(May 15, 1968.)**

**PETITION FOR REHEARING.**

**Before GEWIN, BELL and AINSWORTH, Circuit Judges.**

**PER CURIAM:**

**IT IS ORDERED that appellants' petition for re-  
hearing in this cause be, and the same is hereby,  
DENIED.**